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In the Supreme Court of the United States

OCTOBER TERM, 1946

No.

RAY MOORE,

Petitioner.

vs.

THE STATE OF OREGON.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON, AND BRIEF IN SUPPORT THEREOF.

To The Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:

Roy Moore petitions the Court to issue a Writ of Certiorari to the Supreme Court of the State of Oregon, requiring that there be certified to the Supreme Court of the United States for determination by it, that certain cause in which petitioner was defendant and the State of Oregon was plaintiff.

SUMMARY STATEMENT OF MATTERS INVOLVED:

The petitioner, Roy Moore, was jointly indicted by the Grand Jury of Linn County, Oregon, with Jack Mann and S. D. McClain, alias Douglas Day, and charged with two offenses: first, burglary, by entering a store building in Brownsville, Oregon; and second, the charge of larceny. The petitioner, Roy Moore, entered a plea of not guilty and the defendant S. D. McClain, entered a plea of guilty; the charge against defendant Mann, was dismissed in order to make Mann available as a witness for the State of Oregon, and thereafter Roy Moore, petitioner herein, was tried and convicted of each count and sentenced to serve five years in the Oregon State Penitentiary on the first count, and ten years in the Oregon State Penitentiary on the second count, said sentences to run concurrently.

The State called as its witness S. D. McClain, who had previously entered a plea of guilty, and offered in evidence a letter written by the said defendant S. D. McClain. The letter was addressed to one Red Hoskins, a trustee in the County Jail, which read as follows:

"Red: (The first word is spelled 'Row') Row will make bond in 2 or 3 days and if you will sompten for us Roy said he wold get you the Best Lawer money wold get. If you will Talk to Jack Mann. Tell Jack if he will go before the Grand Juary and Tell them that he was full of Goof Ball when he said Roy was with us at Brownsvill. And say that Roy was not with us. That the thrid man name was

Bennie—any bodie I dont care hoo, and clear Roy Moore of all blame of the Brownsvill job. That I Doug Day will Ride the Boman Murder Beef alone and clear Jack of any part of it. That I forsed him to do what he did in taking Boman for a Ride. And if Jack wont change his storie about Roy being with us I'l tel the Hole Truth about Boman ride and Murder. And Let the ax fall where it belongs. Red don't let Jack see this Kite. Put it down the toilet when you Read it. Then Talk to Jack. Give me a answer at Break, do you need thing, if so let us no. Doug Day."

This letter was delivered to "Red" and was admitted as evidence in this cause by the State, over the objection of petitioner Roy Moore.

The evidence offered in said case clearly shows that Roy Moore had no knowledge of the letter or its contents; never authorized McClain or anyone else to write said letter; and that the transcript of record will clearly show the facts in detail.

In the Supreme Court, petitioner contended that the admission of this letter was in violation of the XIV Amendment to the Constitution, and particularly that part pertaining to the due process of law.

JURISDICTION OF THE UNITED STATES SUPREME COURT

The petitioner makes the claim that the introduction of the aforesaid letter deprived him of the right of due process, as guaranteed under the XIV Amendment to the Constitution of the United States.

Judgment of the Supreme Court of Oregon was entered on the 28th day of January, 1947. Petition for rehearing was filed February 18, 1947. Petition for rehearing was considered by the Supreme Court and thereafter denied on the 25th day of February, 1947.

REASONS FOR ALLOWANCE OF THE WRIT

Petitioner makes claim that the admission of this letter in evidence, written by Douglas McClain, one of the defendants who had previously entered a plea of guilty, was clearly erroneous and deprived and denied petitioner of a fair and impartial trial, pursuant to the Constitution of the United States.

SPECIFICATION OF ERROR

The Supreme Court of the State of Oregon erred in holding that said letter written by the said S. D. McClain, was admissible in evidence against this petitioner; and in so admitting said letter denied this petitioner of his constitutional rights as provided by the XIV Amendment of said Constitution.

WHEREFORE, petitioner prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Oregon, and that the cause may be reviewed and determined by this Court, and the judgment of the Supreme Court of Oregon may be reversed by this Court.

ROY MOORE,

Petitioner;

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**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI:**

It is a uniform rule of law that before a letter or any written communication passing between parties is admissible in evidence, it is necessary to show the same is written with the consent and approval, or at least the knowledge of the accused,—petitioner herein. This universal rule was recognized in the case of the State v. Bailey, 90 Ore. 626-645, in which case it was held that correspondence and check stubs which the accused had never seen or knew of, were inadmissible in evidence against him.

The Supreme Court of the United States, in the case of Carter v. People of the State of Illinois, 67 S. Ct. 216, held that the State must give one whom it deprives of his freedom, the opportunity to open an enquiry into intrinsic fairness of criminal process, even though the process appears proper on the surface, and questions of fundamental justice protected by due process clause can be raised. Likewise, in the case of Ashcraft v. Tennessee, 322 U.S. 143; 64 S. Ct. 921; 88 L. Ed. 1192.

We therefore pray the Court grant a Writ herein requesting that the Constitutional rights of this petitioner may be protected.

Respectfully submitted,

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